

Remarks

Claims 30-33 and 35-38 were rejected under 35 U.S.C. §102(b) by Koester (U.S. Patent No. 4,241,257). Claims 30 and 35 describe that light directed into the medium and returned light collected from the medium substantially share a common objective. In contrast, Koester's objective lens L3 illuminates the specimen using "only about half of the aperture of lens L3", see col. 4, lines 2-4, and light returning from the specimen passes through the other half of the aperture of lens L3, as evident by illustrated light rays through lens L3 in FIGS. 1, 4, 5, 7, and 11. Although the light illuminating and light returning may use the same objective in Koester, such light illuminating and light returning do not substantially share that objective since the illuminating light path and returning light path each utilize one-half of the objective's aperture. In the Koester embodiment of FIG. 9, different lens L3 and L4 direct light and collect light, respectively, and thus a common objective is not present in FIG. 9. Clearly, Koester lacks the objective of Claims 30 and 35.

It is the Examiner's position that even though Koester shows light passing through the objective and returned through the objective at different halves of aperture, that since there is one objective lens that directed light and returned light share the same objective lens. Applicant does not dispute that Koester's returned light and directed light share an objective lens, however Koester's returned light and directed light clearly do not share substantially that objective lens as described in Claims 30 and 35. Such is taught by the present application, but not even suggested by Koester. In order to clarify the claimed invention, rather than overcome the rejection, Applicant has amended Claims 30 and 35 to describe that light directed into the medium and returned light collected from the medium each share substantially an entirety of the objective. Clearly, Koester cannot be said to have light directed and collected returned light as each sharing substantially an entirety of the objective. Thus, Koester does not anticipate Claims 30 and 35, and Applicant requests that the rejection of Claims 30 and 35, and of their respective dependent Claims 31-33 and 36-38 be withdrawn.

The remaining Claims 39-42 of the application have been allowed. Claim 39 has been amended to correct an error in antecedence, and Claim 41 has been amended to correct a typographical error.

This amendment is being filed with a petition for a three-month extension of time.

Dated: Sept. 4, 2003

Respectfully submitted,



Kenneth J. LuKacher  
Attorney for Applicant(s)  
Registration No. 38,539

South Winton Court  
3136 Winton Road South, Suite 204  
Rochester, New York 14623  
Telephone: (585) 424-2670  
Facsimile: (585) 424-6196

Enclosures: Petition for Extension of Time  
2 Certificates of Mailing by Express Mail, Express Mail No. EV 325176430 US